IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 7606 of 1999
to
FIRST APPEAL No 7612 of 1999
with
FRIST APPEAL No 7613 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA Sd/-
and
Hon'ble MR.JUSTICE D.H.WAGHELA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

1 to 5 No

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STATE OF GUJARAT

Versus

BACHUBHAI TRIKAMBHAI

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Appearance:

MR MUKESH PATEL and MS RV ACHARYA ASSISTANT GOVERNMENT PLEADERS for Appellants

MR VIMAL M PATEL for Respondents

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CORAM : MR.JUSTICE M.R.CALLA
and

MR.JUSTICE D.H.WAGHELA

Date of decision: 29/03/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE M.R.CALLA)

1. In this group of eight First Appeals, the appeals under Section 54 of the Land Acquisition Act, 1894 read with Section 56 of the Code of Civil Procedure are directed against the common judgment and order passed by the Joint District Judge at Junagadh in Land Reference Cases No.167/88 to 173/88 and Land Reference Case No.29/89 passed on 1.4.1999. We, therefore, propose to decide this group of eight First Appeals by this common judgment and order.

2. So far as the common judgment and order passed in the Reference Cases, out of which First Appeals No.7606/99 to 7612/99 arise (out of Land Reference Cases No.167/88 to 173/88) are concerned, the lands of village Kharachia, taluka Bhesan were acquired for the Uben Irrigation Scheme. The notification under Sec.4 was issued on 7.4.1983, the notification under Sec.6 was issued on 19.3.1986, the award was passed on 31.3.1987 and the Land Acquisition Officer had determined the rate of compensation at Rs.150/- per Are (for irrigated lands) and Rs.110/- per Are (for non-irrigated lands). The notice under Sec. 12 (2) was served on the claimants in Land Reference Cases No.167/88 to 173/88 on 31.3.1987. The application to make Reference under Sec.18 was made on 24.8.1987. That was clearly beyond the period of six weeks from the date of service of notice issued under Section 12 (2) and, therefore, the References were clearly time-barred, yet, the Reference Court held that the applications were within time. The reasoning given by the Reference Court is, on the face of it, erroneous in law and, therefore, the order passed by the Reference Court in favour of the claimants in these Reference Cases cannot be sustained in the eye of law and the same is hereby set aside. All these seven appeals, i.e. First Appeals No.7606/99 to 7612/99, are, therefore, allowed and, to that extent, the judgment and order dated 1.4.1999 in relation to Land Reference Cases No.167/88 to 173/88 is set aside.

3. However, the learned counsel for the respondent-claimants in these cases has submitted on the basis of a Division Bench decision of this Court in EXECUTIVE ENGINEER, NARMADA YOJNA MAIN CANAL, VADODARA v. CHANDRASINH NARSINH reported in 1999 (2) G.L.H. at page

138 that certain observations have been made in favour of the respondent-claimants for grant of ex gratia amount commensurate with the rate determined by the Reference Court, i.e. Rs.350/- per Are instead of Rs.150/- per Are for irrigated lands. It has also been pointed out that the Reference Court has increased the rate from Rs.150/- to Rs.350/- per Are on the basis of a Division Bench judgment of our own High Court in the case of DY. GENERAL MANAGER, ONGC v. CHATURJI LALAJI & OTHERS reported in 1998 (1) G.L.R. 130 and in yet another case reported in 1997 (2) G.L.H. 773. It has also been pointed out that for the same irrigation scheme, i.e. Uben Irrigation Scheme, in First Appeals No.2381, 2391, 2406 and 2421 of 1987 decided on 11.8.1994, judgment of which is produced before the Reference Court as Exh.10, the market value had been fixed by the Division Bench as Rs.250/- per Are for irrigated lands and Rs.140/- per Are for non-irrigated lands, whereas the notification under Sec.4 in that case had been issued on 7.2.1979 and, therefore, the correct market value was determined by applying 10% increase to the rates which were determined in the earlier decision dated 11.8.1994 and 25% deduction was also made as mentioned in the end of para 17 of the impugned order passed by the Reference Court. Whereas the References in the instant cases were clearly time-barred, it is not for this Court to issue any such directions in favour of the respondent-claimants, particularly when the appeals have been filed by the State against the impugned order but we leave it open to the appellants to consider the representations of the respondent-claimants in case the same is made by the respondent-claimants before the concerned authorities. These seven appeals, therefore, stand allowed accordingly.

4. So far as Appeal No.7613 of 1999, which arises out of Land Reference Case No.29/89, is concerned, notice under Sec.12 (2) dated 15.9.1987 was served on the claimants on 16.9.1987 and application for Reference under Sec.18 was made on 5.10.1987. That application was clearly within time and the Reference Court has granted the increase in the rate of compensation to Rs.350/- per Are in respect of irrigated lands on the basis of the judgment at Exh.10, which has been produced before the Reference Court read with other reported decisions, to which reference has been made hereinabove. We, therefore, do not find any reason to interfere with this part of the order whereby the rate of compensation has been determined as Rs.350/- per Are for irrigated lands and, to that extent, the order does not warrant any interference.

5. Learned Assistant Government Pleader Ms.R.V. Acharya has invited our attention that the Reference Court has also passed an order for 12% annual increase on additional amount from the date of notification under Sec.4 (1) to the date of award and the claimants have also been awarded 12% interest . It is clear that the claimants were not entitled to any interest on this additional amount and solatium and, therefore, this part of the order cannot be sustained in the eye of law and the same is hereby set aside. First Appeal No.7613 of 1999 is partly allowed to the above extent and the claimants shall not be entitled to any interest on the additional amount and solatium.

6. It is expected that the due amount of compensation shall be paid to the respondent-claimants within the period of three months from the date the certified copy of his order is produced before the concerned authorities by either of the parties.

7. In the result, First Appeals No.7606 to 7612 of 1999 are allowed and First Appeal No.7613 of 1999 is partly allowed.

Sd/-

( M.R.Calla, J.)

Sd/-

29.3.2001 ( D.H.Waghela, J.)

(KMG Thilake)